

### **REMARKS/ARGUMENTS**

Claims 1 and 3-9 are pending in the present application. Claims 1 and 3-5 have been slightly amended to improve their form. No new matter is added by any of the claim amendments. Entry of this Amendment into the file of the present application is respectfully requested as it is believed to place the entire application in condition for an allowance or, at a minimum, to materially reduce the issues for an appeal. Upon such entry, claims 1 and 3-9, as amended, will be pending in the application.

The Office Action Summary provided with the Office Action states that the Office Action is, "responsive to communication(s) filed on 20 March 2008". Applicants, however, believe that the statement is in error as they did not file any communication(s) with the Office on March 20, 2008. They did, however, file an Amendment on November 4, 2008. Applicants therefore believe that the Office Action more correctly should indicate that it is in response to applicants' previous communication filed on 4 November 2008.

#### **Claim Rejection Under 35 U.S.C. §112**

Applicants note with appreciation the Examiner's withdrawal of the rejection of claim 1 under 35 U.S.C. §112, second paragraph.

#### **Rejection Under 35 U.S.C. §103**

The Examiner continues to maintain, however, the rejection of claim 1 under 35 U.S.C. §103(a) over the combination of EP 0 780 129 of Yamada et al. in view of Griesbach et al. USP 6,875,754, JP 10025240 and Schmidt et al. USP 5,578,300. the rejection is now extended, moreover, to claims 3-9. The rejection of claims 1 and 3-9, therefore, is respectfully traversed.

The subject combination of references was extensively discussed in applicants' previous response filed on November 4, 2008. Those remarks are expressly incorporated herein by reference. The Examiner's "Response" to the arguments for patentability presented in applicants' previous Amendment is set forth at pp. 5-7 of the present Office Action and the following remarks are being submitted in response to the comments by the Examiner.

Turning first to the Yamada et al. reference (EP 0 780 129), as pointed out in applicants' previous response and as acknowledged by the Examiner in the present Office Action, the reference does not disclose or even suggest several of the materials recited (i.e., in claim 1) for

inclusion in the presently claimed composition, including xyloglucan, trehalose, laminaran , krestin and pectin. The Examiner alleges, however, that applicants' argument regarding this point is "not persuasive" due to the fact that the "teaching of Griesbach, JP 240 and Schmidt have been cited for [the] other components of the claimed invention." The Examiner thus takes the position that it would be 'obvious' to modify the composition taught by Yamada by including components such as xyloglucan, trehalose, laminaran , krestin and pectin as taught by the secondary references.

Applicants respectfully submit, however, that the unexpectedly improved results achieved with the compositions according to the present invention (i.e., as compared to that disclosed by Yamada et al.) directly contradict the Examiner's finding of 'obviousness' That is, as pointed out in applicants' prior response, the composition as recited in the present claims provides a significant and unexpected improvement in the treatment of atopic dermatitis and psoriasis vulgaris over that disclosed by Yamada et al.. More particularly, the cited Yamada et al. reference discloses an effective rate against atopic dermatitis that was only about 95% on average, whereas the rate obtained with regard to psoriasis vulgaris was only about 90% on average. In the case of the presently claimed composition, however, as taught in the present application effective rates of around 99% were obtained (see, e.g., Table 3 on p. 13).

As indicated above, applicants submit that the improved results offered with the use of the claimed composition and method provides significant evidence of the non-obvious of the pending claims. Further in regard to the improved results described herein, moreover, the Examiner appears to give them little weight because, "the instant claims do not recite the percentage effectiveness". Applicants do not see, however, why it is necessary for the claims to actually recite a specific percentage effectiveness when it has, in fact, been demonstrated that the claimed composition is more effective than that of Yamada et al. Such a showing of an unexpected improvement offered with the use of the claimed composition is believed to render the present claims unobvious over the combination proposed by the Examiner, notwithstanding whether the claims recite a specific percentage effectiveness.

Moreover, further with regard to the secondary references combined with Yamada et al to reject applicants' claims, with regard to Griesbach (USP 6,875,754) for example, applicants note the Examiner's comments in the portion bridging pp. 5-6 wherein the Office Action states, "Applicants argue that the fact that the composition disclosed in the reference is lacking  $\beta$ -(1,6)

linkages thus teaches away from the composition according to claim 1 since the xyloglucan and laminaran which are identified as required components of the presently claimed composition do contain such a  $\beta$ -(1,6) linkage. Applicants' arguments are not persuasive because while the reference prefers the absence of the  $\beta$ -(1,6) linkages, table 2 shows that all of the glucans (with or without 1-6) linkages have activity that is significant against skin aging."

In response, as indicated by the Examiner various glucans are shown as No. 1 and as Nos. V1 to V7 in Table 2 of the Griesbach reference. The glucans which contain the  $\beta$ -(1-6) linkages, however, are provided only for purposes of comparison against the activity of those glucans without such linkages, i.e., wherein the activity of the compounds without the subject linkages is shown as being better than those compounds having such linkages. Applicants thus submit that the disclosure found in the reference thus teaches away from using compounds containing the linkages, i.e., as found in applicants' presently claimed composition, in favor of compounds that are free from the repetitive  $\beta$ -(1,6) linkages.

In addition to the above, the reference contains no disclosure which would teach, or even suggest that the glucans shown in Table 2 are or would be effective to treat dermatitis such as atopic dermatitis and psoriasis vulgaris. In the Examples provided by the reference, female probands applied skin creams, the composition of which is shown in Table 1, and the depth and length of skin wrinkles (i.e., the smaller the percent, the better the degree) and the skin roughness (the higher the value, the better the degree) were determined. The results are as set forth in Table 2 of the subject reference. Thus, what is being gauged is the effect of a beauty treatment. One having an ordinary level of skill in this art would not find in such results any suggestion to practice applicants' presently claimed method which involves the application of an external medicament for treating dermatitis such as atopic dermatitis and psoriasis vulgaris.

Still further, the subject reference fails to disclose xyloglucan, trehalose, laminaran and pectin and the amounts thereof recited in the present claims. While the Examiner will submit in response that the addition of these particular materials are suggested by others of the cited secondary references, applicants respectfully submit in response that the unexpectedly improved results discussed above (i.e., in the treatment of such atopic dermatitis and psoriasis vulgaris) provides significant evidence against the 'obviousness' of combining the references in the manner suggested in the Office Action.

Turning next to a discussion of JP '240 the Examiner states with regard to the subject reference, "the teachings of JP240 have been cited for specific contents such as trehalose and other sugars for their effectiveness in treating the claimed conditions A skilled artisan would have employed the components of JP 240 in the composition of Yamada to arrive at the instant invention.". Applicants respectfully disagree, however. Applicants will concede that JP '240 discloses that trehalose may be used in a bath powder and that the powder may be used in the treatment of atopic dermatitis and psoriasis. However, the subject reference entirely fails to disclose an effective range of such trehalose and, in particular, that recited in applicants' present composition and method claims. Furthermore, applicants continue to maintain their previously expressed position that it would not be obvious to combine JP '240 which relates to a bath powder with Yamada et al which concerns an external medicine used to treat dermatitis. Further in support of this position is the issue of the unexpected improvement offered with the compositions and methods of the present invention (see the discussion above) which represents an additional factor supporting applicants' contention that it would not be obvious to make the cited combination relied upon to reject the present claims.

Turning finally to a discussion of the Schmidt '300 patent, applicants stress that as discussed at p. 8 of their prior response, the subject reference discloses a method of treating allergic contact dermatitis wherein a hydrogen peroxide generating a polymeric material comprising gelatin and pectin is used to induce an oxidative stress and obtain a heat shock response. Schmidt thus utilizes the composition(s) disclosed therein differently than in the case of the presently claimed composition/method. Schmidt, thus, does not disclose an external medicine for treating atopic dermatitis and/or psoriasis vulgaris. Furthermore, Schmidt fails to disclose various components of applicants' claimed composition that are missing from Yamada et al. , namely xyloglucan, laminaran, krestin and pectin, including the amounts of these materials recited in the presently pending claims.

In summary, applicants submit, as noted above, that the entire combination of references cited to reject the present claims would be non-obvious in light of the unexpectedly improved results obtained with the presently claimed composition and method. Furthermore, the combination of Yamada, Griesbach, JP '240 and Schmidt apparently fails to teach or suggest xyloglucan, particularly in the amount presently claimed, as well as laminaran, again particularly in the amount recited in the present claims of this application. Additionally, as to the additional

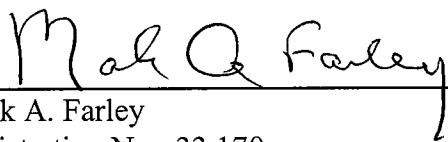
components that are actually disclosed in the 'secondary' references, including trehalose, krestin and pectin, although JP '240 does disclose trehalose, the amount thereof is not disclosed. In like manner, although Schmidt discloses pectin the amount thereof is not disclosed. And, although Griesbach discloses krestin, the material is used in a Comparative Example which, in applicants' view, teaches away from the use of the compositions and methods that are recited in the claims presently under rejection.

For the reasons presented above, therefore, even the combined disclosures of Yamada et al., Griesbach, JP '240 and Schmidt do not teach or suggest the composition of claim 1 and/or the method of claim 5. Thus, those claims are believed to be distinguishable over the cited combination of references, i.e., for the reasons given above. Furthermore, as the remainder of the rejected claims depend, from the subject independent claims, those dependent claims are believed to be distinguishable for the same reasons as the independent claims. The Examiner, therefore, is respectfully requested to reconsider and withdraw the rejection of claims 1 and 3-9 under 35 U.S.C. §103.

Respectfully submitted,

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